



# JOHN D. FERRERO

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June 21, 2005

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**OFFICE MANAGER:**  
Patty J. Knepper

Christina Wise  
Stark County Auditor's Office  
110 Central Plaza South, Ste. 220  
Canton, OH 44702

**Re: Reclassification of Property  
Our File No. M123.00188**

Dear Ms. Wise:

I have before me your email dated May 6, 2005, asking for the opinion of this office regarding the effect of *Funtime, Inc. v. Wilkins* on classification of certain types of property. You have specifically inquired whether *Funtime* may be interpreted to allow for reclassification of a golf cart path and golf holes as personal property.

The *Funtime* case involved the reclassification of certain amusement park rides and stations from real property to personal property. In that case, the Ohio Supreme Court discusses at length the proper method of determining whether certain property is real or personal for tax purposes.

In *Funtime*, the Court analyzed the interaction between R.C. 5701.02 and R.C. 5701.03. In doing so, it came to the conclusion that the following steps must be taken: (1) Determine whether the item meets the requirements of one of the definitions of real property in R.C. 5701.02; (2) If the item does not fall under one of those definitions, it is personal property; (3) If the item does meet one of the definitions in R.C. 5701.02, it is real property *unless* it is "otherwise specified" in R.C. 5701.03; (4) If the item falls under one of the definitions in R.C. 5701.03, it is personal property.

Golf holes are items which may be moved about on a particular green or even removed completely. Golf holes are items of tangible personal property, but are not affixed to the land. Because the holes do not meet one of the definitions of real property in R.C. 5701.02, they are personal property. (Golf holes do not include the actual land around them used as a putting green, which is obviously real property.)

Pursuant to R.C. 5701.02 (E), the cart path appears to meet the definition of a "structure." A "structure" is defined as "a permanent fabrication or construction, other than a building, that is attached or affixed to land, and that increases or enhances utilization or enjoyment of the land." Structures include, but are not limited to, bridges, trestles, dams, storage silos for agricultural products, fences and walls. A structure is real property.

Applying the method outlined in *Furtime*, the next question is whether the cart path would fall under one of the definitions otherwise specified in R.C. 5701.03.

R.C. 5701.03(B) defines a "business fixture" as "an item of tangible personal property that has become permanently attached or affixed to the land or to a building, structure, or improvement, and that primarily benefits the business conducted by the occupant on the premises and not the realty. "Business fixture" includes, but is not limited to, machinery, equipment, signs, storage bins and tanks, whether above or below ground, and broadcasting, transportation, transmission, and distribution systems, whether above or below ground. "Business fixture" also means those portions of buildings, structures, and improvements that are specially designed, constructed, and used for the business conducted in the building, structure, or improvement, including, but not limited to, foundations and supports for machinery and equipment. "Business fixture" does not include fixtures that are common to buildings, including, but not limited to, heating, ventilation, and air conditioning systems primarily used to control the environment for people or animals, tanks, towers, and lines for potable water or water for fire control, electrical and communication lines, and other fixtures that primarily benefit the realty and not the business conducted by the occupant on the premises.

In applying this definition to the amusement park rides and stations, the Court in *Furtime* asked whether the items in question would be of benefit to a buyer of the land who was engaged in a different business. If yes, the benefit is primarily to the realty and the item is real property. If no, the benefit is primarily to the business conducted by the occupant, making it a business fixture, and thus, personal property.

When asking this same question in regards to the cart path, it is apparent that such a path could be beneficial to the enjoyment of the land independent of the golf business (i.e. as a walking path, biking path, or nature trail). Because the path increases or enhances the utilization or enjoyment of the land, the path retains its character as real property.

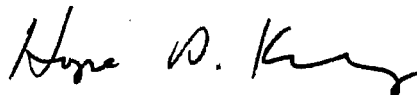
Christina Wise  
Stark County Auditor's Office  
June 21, 2005  
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During our discussions, you also mentioned irrigations systems, storage buildings clubhouses and greens. Applying the same analysis, irrigations systems, storage buildings and clubhouses are similar to the paths, in that they meet the initial requirements of real property (all being personal property somehow affixed to the land) and retain that character due to their benefit to the land. On the other hand, greens are not some type of tangible personal property affixed to the land—greens *are* the land and, thus, will always be real property.

The question of whether an item primarily benefits the business conducted on the premises or the realty itself may often be the deciding factor. It is a question that the Board of Revision will have to answer on a case by case basis. It is the opinion of this office that due to the unique nature of amusement park rides, the *Funtime* case may be limited to such unusual circumstances where property has only one conceivable use. Based on the facts as provided to me in this particular case, golf holes are personal property and cart paths, clubhouses, storage buildings, irrigation systems and greens are real property.

If you have any questions in connection with this opinion letter, or if you have additional information that you feel may be relevant, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Hope S. Konovsky". The signature is fluid and cursive, with the first name "Hope" being more prominent.

Hope S. Konovsky

Assistant Prosecuting Attorney

330-451-7915



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#### OFFICE MANAGER:

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May 6, 2005

Christine Wise  
Stark County Board of Revision  
110 Central Plaza South  
Canton, Ohio 44702

**Re:    Reclassification of Property  
      Our File No. M123.00188**

Dear Ms. Wise:

The Stark County Prosecutor's Office received your written request for a legal opinion on May 6, 2005, concerning the above matter. I have been assigned to research and answer your questions.

Please call me if you have any additional information which you feel is important.

Sincerely,

Hope S. Konovsky  
Assistant Prosecuting Attorney

HSK:slh